



Metering and Billing Approval Logo

Consultation on an Approval Logo for the Metering
and Billing Scheme and a modification to the Ofcom
Metering and Billing Direction

Consultation

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About this document

Providers of Publicly Available Telephone Services ('PATS' - fixed and mobile voice services) with an annual turnover in those services of over £40 million are required to obtain approval of their Total Metering and Billing Systems ('TMBS') from third-party assessors appointed by Ofcom.

In order to obtain approval, the providers' metering and billing systems must comply with the Metering and Billing Direction ('the Direction'). The Direction is a technical standard intended to ensure that communications providers' systems deliver accurate bills to customers.

This document sets out our proposals and seeks stakeholders' views on introducing a voluntary 'Approval Logo' available for use by those communications providers that have had their metering and billing systems approved. Use of the Approval Logo would indicate to customers that their providers' billing systems have been independently audited and approved by Ofcom-appointed third-party assessors, known as 'Approval Bodies'.

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Section 1

Executive Summary

- 1.1 To ensure that consumers are not overcharged for services and to maintain consumer confidence in the accuracy of bills, Ofcom requires all providers of electronic communications services to provide accurate bills under General Condition 11 ('GC11'). In addition, GC11.3 – GC 11.5 set out the requirements for providers of Publicly Available Telephone Services ('PATS' - fixed and mobile voice services) with a turnover in those services of over £40 million per year. PATS providers that fall into this category must obtain approval of their Total Metering and Billing Systems ('TMBS') from third-party assessors against the requirements of a Metering and Billing Direction set by Ofcom ('the Direction'). The third party assessors – called Approval Bodies ('ABs') – are appointed by Ofcom. There are currently three ABs.
- 1.2 The Direction is essentially a technical standard intended to ensure that communications providers' ('CPs') billing systems deliver accurate bills. Providers of fixed and mobile voice services are required to meet mandatory compliance requirements in the Direction whilst providers of data connections (mobile and broadband) and Voice over Internet Protocol ('VoIP') are subject to voluntary provisions.
- 1.3 Ofcom conducted a review during 2013 and 2014 to ensure that the scope and requirements of the Direction remained appropriate and proportionate given changes in the market and in the light of CPs' and ABs' experiences in operating the Direction. This review resulted in Ofcom making the current version of the Direction in July 2014 and amending GC 11 in September 2014.
- 1.4 As part of this review, Ofcom sought stakeholders' views on a range of initiatives to promote awareness of the Direction in our February 2014 consultation. These included proposals for the use of a logo to indicate an approved TMBS, for use by CPs on their literature and websites. In our July 2014 statement we said that we would work with the ABs and industry to consider if and how a logo could be used and introduced, including any changes to the Direction that might be necessary to accommodate this proposal.
- 1.5 Following the statement, we have developed our proposals further. In this consultation we are seeking views on our proposal to introduce a logo for use on a voluntary basis to indicate an approved TMBS (an 'Approval Logo'). It would be available for CPs whose metering and billing systems are approved under either (or both) the mandatory and voluntary provisions of the Direction. We believe an Approval Logo would provide a means to:
 - give CPs a consistent and clear way to promote the approval of their TMBS to their customers;
 - encourage CPs to obtain approval under the Direction in areas where that is voluntary, rather than mandatory, enhancing consumer protection and bringing commercial benefits to such CPs; and
 - assist customers for whom the accuracy of billing is an important criteria when comparing CPs or seeking information about their CPs' billing.

- 1.6 We are also setting out a design for the proposed Approval Logo. The design has four variations reflecting the various services for which a CP's TMBS can be approved.
- 1.7 We are seeking views on the proposals by 25 August 2015.

Section 2

Introduction

Background

Ofcom's primary duty under the Communications Act 2003

- 2.1 Ofcom is the regulator for the communications sector. Under section 3(1) of the Communications Act 2003 ('the Act'), Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.2 Section 3(3) of the Act sets out that, in performing their duties under section 3(1), Ofcom must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to any other principles appearing to us to represent the best regulatory practice. We must also, where relevant, have regard in performing those duties to matters including the desirability of promoting competition in relevant markets (section 3(4)(b)).
- 2.3 Section 3(5) of the Act meanwhile says that, in performing our duty of furthering the interests of consumers, Ofcom must have regard in particular to the interests of those consumers in respect of choice, price, quality of service and value for money.

General Conditions

- 2.4 Ofcom has the power under section 45 of the Act to impose various types of conditions on Communications Providers ('CPs'). These include General Conditions ('GCs') which apply to all providers, although not every GC is relevant to every provider or to every type of consumer or service provided. A GC is a condition authorised or required by one or more of sections 51, 52, 57, 58 or 64 of the Act. In particular, under section 51(1)(a) Ofcom may set conditions making such provisions as Ofcom considers appropriate for protecting the interests of the end-users of public electronic communications services.
- 2.5 In order to create or modify a GC, Ofcom must, by virtue of section 47 of the Act, be satisfied that such a condition or modification is:
- objectively justified;
 - not unduly discriminatory;
 - proportionate; and
 - transparent in relation to what it is intended to achieve

The need for Metering and Billing provisions

- 2.6 Ofcom made GC11 in order to regulate the accuracy of bills for electronic communications services ('ECS'). It was considered necessary because a feature of ECS is that consumers are not generally readily able to quantify their service usage or to verify their bills. Unlike in gas and electricity, for example, there is no domestic

meter to enable consumers to monitor their volume of usage. In addition, the number of services used and the complexity of billing can make it extremely difficult for a consumer to check that their bill is correct.

- 2.7 Therefore, although consumers may be able to identify major errors, to a large extent many have to take the bills they receive on trust. Ofcom has taken the view that it is important to ensure that such trust is justified, that consumers are not overcharged and that consumer confidence in the accuracy of bills is maintained.
- 2.8 As a result, Ofcom put in place GC11 which provides an important protection for consumers who, in the absence of Ofcom's powers to take enforcement action under GC11, would be forced to rely on bringing multiple contractual claims in the event of inaccurate bills.
- 2.9 GC11 imposes a requirement for billing accuracy on all providers of public electronic communications services. GC11.1 states:
- “The Communications Provider shall not render any Bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every amount stated in that Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question”.
- 2.10 GC11.3 imposes additional requirements on any provider of PATS - essentially fixed and mobile voice services - with a Relevant Turnover in its most recent complete financial year exceeding £40 million. Under GC11.4, any such CP is required to obtain approval of its TMBS for PATS services, in accordance with the requirements of the Direction (see below), from an AB, and to comply with any direction made by the AB in respect of such approval.
- 2.11 ABs are appointed by Ofcom. Currently there are three ABs appointed - the British Approval Board for Telecommunications (BABT), the British Standards Institution (BSI) and Enigma QPM. The ABs charge the CPs for initial approval and the on-going monitoring that they carry out.

Ofcom Metering and Billing Direction

- 2.12 Ofcom has power under section 49 of the Act to give directions that affect the operation of GCs. Section 49 says that, where a condition set under section 45 (e.g. a General Condition) has effect by reference to a direction from Ofcom, Ofcom may only give, modify or withdraw the direction where we are satisfied that similar tests to those applicable under section 47 (see above) are met.
- 2.13 Ofcom made the Direction, under GC11, on 31 July 2014. The Direction is in essence a technical standard intended to ensure that compliant systems will deliver accurate bills. Each CP's TMBS must meet its requirements in order to secure approval for that system from an AB.
- 2.14 The Direction is principally comprised of process-based requirements. Amongst other things these require the CP to:
- produce, and agree with the AB, a High Level Description of its TMBS, including all business and technical processes that can impact upon the system and those of related third parties or sub-contractors;

- assess risks to the TMBS's accuracy and document mitigation actions;
- produce and agree with the AB a Measurement Strategy setting out how risks are to be monitored; and
- have processes in place for receiving, identifying, investigating and dealing with incorrect charges on consumers' bills.

2.15 In addition, the Direction sets out:

- the procedure to be followed by CPs in the event of failures in the performance of their TMBS; and
- the assessment process for initial and on-going approval.

2.16 The mandatory provisions of the Direction apply to PATS services (i.e. fixed and mobile voice services). The Direction also contains voluntary provisions on data services and VoIP services.

The audit by the Approval Body

- 2.17 The AB's audit of a CP's TMBS focuses on the process-based requirements, assessing the processes, measures and controls that a CP has in place to meet the standards set out in the Direction.
- 2.18 The AB assesses a CP's TMBS for products and services that meet the materiality rules described in the Direction and such other services as may be agreed between the CP and the AB. ABs will approve TMBS that are compliant with the Direction and issue a refusal to approve non-compliant TMBS.
- 2.19 Sections 49 and 49A of the Act place an obligation on ABs to issue a formal notification and engage in a one month consultation period when they are proposing to give, modify or withdraw an approval of a CP's TMBS.
- 2.20 Details of Notification by an AB of its 'proposal to Approve' and 'grant Approval' of a CP's TMBS can be found on the Ofcom website¹.

The Review of the Metering and Billing Scheme 2013-14

- 2.21 Ofcom conducted a review during 2013 and 2014 to ensure that the scope and requirements of the Direction remained appropriate and proportionate given changes in the market and in the light of CP's and AB's experiences in operating the Direction. This review resulted in Ofcom making the current version of the Direction in July 2014² and amending GC 11 in September 2014³.

The Approval Logo

- 2.22 During the review of the Direction, some stakeholders argued that low consumer awareness of the Direction reduced the commercial benefits of approval by the ABs

¹ <http://stakeholders.ofcom.org.uk/telecoms/policy/metering-billing/>

² http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/mou-oct2014/The_2014_Direction.pdf

³ http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/metering-billing/documentation/Statement_modification_GC11_Sept_2014.pdf

and the incentives on CPs not covered by the mandatory aspects of the Direction to seek approval to comply voluntarily.

- 2.23 As part of the proposals in the February 2014 consultation, we sought stakeholders' views on initiatives to promote awareness of the Direction. These proposed initiatives included providing more information about the Metering and Billing Scheme on Ofcom's and the ABs' websites and the introduction of an Approval Logo for CPs to use – if they chose - to indicate that their TMBS had been approved by the AB.
- 2.24 In responses to the consultation there was general support from stakeholders for introducing an Approval Logo as a way of promoting awareness of the Metering and Billing Scheme:
- BT supported the use of a logo for those CPs who gained approval under the 2014 Direction.
 - EE agreed that some providers may choose to promote the approval of their TMBS to their own customers in a way to differentiate themselves from providers whose TMBS has not received approval.
 - KCOM considered very few consumers would have an awareness of the Direction and what approval of their billing systems meant and thought it was it was up to individual providers to raise awareness.
 - Sky considered there could be some consumer benefit in a universal approval logo, though this needed to be balanced against the possible costs of introducing such a logo.
- 2.25 One CP - Three – indicated that it was satisfied with the general awareness of the Metering and Billing Scheme and did not feel customer awareness was currently a concern.
- 2.26 In the July 2014 Statement, we explained that we would continue working with the ABs and industry to develop proposals for an Approval Logo and to consider whether and what changes to the Direction might be necessary to accommodate this proposal.

This consultation document

- 2.27 Since the Statement we have been working to develop the Approval Logo concept further, including discussions with the ABs at the regular meetings we hold with them to discuss implementation of the Direction⁴ and with CPs at the biannual meeting held by the ABs⁵. Taking account of these discussions and the responses to the earlier consultation, we have worked with an agency on options for design of a logo.
- 2.28 This consultation sets out and seeks views on our proposal for an Approval Logo for use by CPs.
- 2.29 Section 3 discusses the aims and objectives of the proposed Approval Logo and its design and explains the process CPs would need to follow in order to use it. This section also sets out the impact on stakeholders.

⁴ <http://stakeholders.ofcom.org.uk/telecoms/policy/metering-billing/approval-bodies/>

⁵ http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/metering-billing/meetings-approval-bodies/notes/3_March_2015.pdf

- 2.30 Section 4 outlines the details of how we will implement our proposals, including the modification we propose to make to the Direction and our assessment of how our proposals meet the tests under sections 3 and 4 of the Act.

Impact Assessment

- 2.31 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This reflects section 7 of the Act, which requires Ofcom to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on Ofcom's website.⁶
- 2.32 Specifically, pursuant to section 7 of the Act an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to proposals we make.
- 2.33 In this case, Ofcom does not consider that an impact assessment is required under section 7. We expect that the voluntary use of the Approval Logo would have the beneficial consequences described in this consultation document. We do not, however, consider that such voluntary use would, by itself, involve a major change in Ofcom's activities or have a significant impact in the terms of section 7. We conducted a full impact assessment of the amendments to the Direction in February 2014, which is the main regulatory instrument in this matter. Even so, we have set out in this document our provisional views about the likely impact of our proposals.

Equality Impact Assessment

- 2.34 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply. Equality impact assessments ('EIAs') assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.35 We have given careful consideration to whether or not our proposals set out in sections 3 and 4 will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage that the proposals contained in this consultation will have a detrimental impact on any particular group of people.

Consultation Process

- 2.36 This consultation invites stakeholders' views on our proposals and the proposed modifications to the Direction by 25 August 2015. Ofcom will then publish a statement setting out our conclusions, having taken account of stakeholder's responses.

⁶ <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

Section 3

Proposal for an Approval Logo

- 3.1 In this section we consider the aims and objectives of an Approval Logo and how we anticipate it would work to help inform consumers about their providers' billing systems. We also discuss the proposed Approval Logo design and explain the process CPs would need to follow in order to obtain and use the relevant Approval Logo.
- 3.2 We consider the impact on consumers, CPs and competition of i) not introducing the Approval Logo and also ii) introducing the Approval Logo.

Aims of the Approval Logo

- 3.3 Currently, the only information available for consumers regarding which CPs' billing systems have been approved under the Direction is on Ofcom's and the ABs' websites and relies on those sites being visited by consumers. The Ofcom website for instance shows the name of the CP approved, the services covered by the approval and a reference number for the approval given by the relevant AB.⁷
- 3.4 The Approval Logo aims to provide an easily recognizable way for CPs to show that their billing systems have been independently audited and approved by ABs appointed by Ofcom.
- 3.5 Because of the complexity of billing, it can be difficult for consumers to check that the bill they receive for their usage is correct and although consumers may be able to identify major errors, to a large extent many have to take the bills they receive on trust. The Approval Logo aims by easy, visible means to give consumers a level of confidence and assurance on the robustness of the billing systems that are used by Approved CPs to calculate their bills.
- 3.6 Additionally, the use of an Approval Logo has the potential to encourage relevant providers to seek approval for their metering and billing systems in areas where that approval is voluntary, rather than mandatory. It may make such approval attractive for commercial reasons, where consumers value the billing accuracy vouched for by the logo. In those circumstances, consumers would gain the benefit of services the metering and billing of which has been assessed as accurate. In these ways, the Approval Logo aims to provide benefits to CPs and consumers alike.

Design of the Approval Logo

- 3.7 In order to formulate an appropriate design and implementation plan for the Approval Logo we have:
- taken account of comments made by stakeholders during the review of metering and billing

⁷ http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/metering-billing/List_of_Approval_Holders.pdf

- taken account of comments from the ABs following the review on the possible options for use and design of a logo; and
 - worked with an external design agency who created the proposed Approval Logo in accordance with Ofcom's specification.
- 3.8 Ofcom has selected a simple design for the proposed Approval Logo that incorporates Ofcom's Logo and is in keeping with the design of the logo for the Ofcom Price Accreditation Scheme⁸. We chose the design on the basis that we considered it would utilise the Ofcom logo (which consumers are already familiar with) and help build awareness of the Approval Logo over time. The design of the proposed Approval Logo has been shared with and agreed by the ABs.
- 3.9 During discussions with the ABs regarding the possible designs for an Approval Logo, the three ABs suggested that each Approval Logo should include the AB's logo that had approved the CP displaying the Approval Logo. However, incorporating each AB's logo in addition to the Ofcom logo in the design would require a level of detail that would render the print illegible within the constraints of the design parameters. We consider that this would render the logo ineffective. We also consider that an Approval Logo incorporating the Ofcom logo and an AB logo is likely to be confusing for consumers. We therefore decided against this option. We have explained to the ABs that the relevant AB's logo may still be displayed separately to the Approval Logo if the CP chooses to do so, subject to the AB's agreement. This approach was subsequently supported by the ABs.
- 3.10 We propose that there should be four variations of the Approval Logo reflecting the different services covered by the Direction which are:
- voice services;
 - voice and data services;
 - wholesale voice and data services; and
 - wholesale voice services.
- 3.11 Each proposed variation of the Approval Logo will state clearly what services have been approved for the CP displaying the Logo.
- 3.12 Section 4 discusses the changes to the Direction that Ofcom is proposing in order to govern the use of the Approval logo. The proposed Approval Logo designs are set out in Annex 6 in the Schedule to the Notification setting out the proposed modifications to the Direction.

Use of the Approval Logo

- 3.13 We propose that once a CP's TMBS has been approved (whether under the mandatory or voluntary provisions of the Direction), the relevant AB will determine which variation of the Approval Logo it is appropriate for the CP to use based on the service(s) within the scope of the CPs approval. The AB will then tell the CP which Approval Logo it is permitted to use for the purpose of informing its customers that it has achieved approval.

⁸ <http://stakeholders.ofcom.org.uk/consultations/ocp/statement/pricescheme/consumerfaq/>

- 3.14 The use of the proposed Approval Logo will be voluntary and it will be up to each CP to decide whether or not to make use of the logo to promote awareness that its TMBS has been independently assessed and approved by an AB. If the Approval Logo is introduced, a list of CPs' approved TMBS(s) will still be published on Ofcom's and the ABs' websites irrespective of whether or not CPs choose to make use of the logo in their own literature and publications.
- 3.15 We propose that CPs will need to supply a copy of their Certificate of Approval to Ofcom in order to obtain a pdf of the appropriate Approval Logo. Ofcom will supply the relevant pdf once it is satisfied that the CP has the appropriate Certificate of Approval for the services listed on the Approval Logo being sought by the CP. Ofcom will seek confirmation from the ABs where necessary to determine this.
- 3.16 If the proposed Approval Logo is used by CPs on their websites, Ofcom would encourage CPs to provide a link through to Ofcom's consumer information web page⁹ which includes an explanation of the Metering and Billing Scheme and a list of Approved CPs.
- 3.17 Where a CPs approval under the Direction is withdrawn, we propose that the relevant AB will tell the CP that it is no longer permitted to use the Approval Logo for the services within the scope of the approval that has been withdrawn. The CP shall then be required to immediately cease all use of the relevant Approval Logo.

Options

- 3.18 There are two proposed options under consideration and we set out below the arguments for and against each:
- no Approval Logo; or
 - introduce an Approval Logo

No Approval Logo

Impact on Consumers

- 3.19 The status quo would be maintained with little to no impact on consumers. However, consumer awareness of CPs who have had their billing systems approved under the Direction would continue to rely on the consumer seeking out which CPs have been approved by visiting the Ofcom and individual AB websites. Where CPs who might otherwise have been encouraged by the existence of a logo to seek voluntary approvals under the Direction do not do so, consumers would be denied the enhanced protection of that approval, in terms of billing accuracy, and the additional information and assurance that the use of that logo could have provided.

Impact on Communication Providers

- 3.20 There would be no change to the current practice. CPs gaining approval of their TMBSs will continue to be listed and publicised on the Ofcom and MABABF websites. Providers who have gained approval under the Direction will not have an easily recognisable method to demonstrate to consumers that they meet the billing accuracy standards in the Direction. They would not have any commercial benefit

⁹ <http://consumers.ofcom.org.uk/phone/>

that could be derived from having an Approval Logo that is re-assuring and attractive to consumers.

Impact on Competition

- 3.21 There would be no change to the current position. Providers will be unlikely to be able to gain competitive advantage by obtaining approval under the Direction as consumers concerned about billing will not have an easily accessible way of identifying which CPs have had their billing systems approved under the Direction.

Introduce an Approval Logo

Impact on consumers

- 3.22 The use of the Approval Logo by CPs has the potential to increase consumer awareness regarding which CP's billing systems have been independently audited and approved having met the compliance requirements set out in the Direction. As the use of the Approval Logo is a voluntary proposal, the impact on consumers will depend on the take up and use of it by CPs. It is possible that if take up by CPs is low, there will be little impact on consumers as they will continue to have to seek out which CPs have been approved by visiting the Ofcom and individual AB websites. However, to the extent that the availability of the logo encourages voluntary approvals under the Direction and leads to use of the logo by CPs with (either mandatory or voluntary) approval, this will variously increase consumer protection and awareness of the approval scheme and facilitate confident and informed consumer choice.

Impact on Communication Providers

- 3.23 As the use of the Approval Logo is a voluntary proposal, it will be up to each CP to decide whether or not to use the logo to promote awareness to its customers regarding approval of its billing systems, having met the requirements set out in the Direction.
- 3.24 It is for individual CPs to weigh up the benefits for using the logo and the costs of applying it to any of its publications or websites. CPs would be expected to absorb these costs as part of their day-to-day administration. As it is most likely that the logo will be advertised on CPs' websites, the costs are likely to be minimal. It is Ofcom's view that the overall costs would be likely to be outweighed by the potential competitive advantage a CP may obtain by advertising approval of its billing systems to consumers by use of the Approval Logo. Ultimately though, we believe CPs would only use the logo and incur costs if they believed it was to their net benefit.

Impact on Competition

- 3.25 There will be no change to the requirement in GC11 that CPs providing PATS with a turnover of more than £40m per year need to obtain approval from the ABs for their billing systems in compliance with the Direction. As the use of the Approval Logo is a voluntary proposal, any potential impact on competition will depend on the take up and use of it by CPs. It is possible that CPs that display the logo may be able to obtain a competitive advantage amongst consumers concerned about billing accuracy who are prepared to compare providers on the basis of whether their billing systems have obtained approval or not. It is also possible that if take up by CPs is low, there will be little to no impact on competition as awareness of the Approval Logo may remain low amongst consumers seeking to compare providers.

Conclusion

- 3.26 On the basis of the analysis above and in the previous sections of this document, our provisional view is that it would be beneficial to consumers, CPs and competition to introduce the Approval Logo. The next section sets out the consequent changes needed to implement this proposal and how the proposal meets the requirements of the Act.

Q1 Do you agree with the proposal to introduce an Approval Logo? Please explain your reasons for your response.

Section 4

Changes to the Direction and Applying the tests in the Communications Act 2003

4.1 This section sets out our proposals to change the Direction in order to implement the Approval Logo and our analysis of how the proposals meet the tests set in section 49 and the duties under sections 3 and 4 of the Act.

Changes to the Direction

4.2 The details of the modifications we are proposing to make to the Direction are set out in the notification instrument at Annex 5. In summary, we are proposing to modify the Direction by making changes to clause 5.3 of the Direction, which deals with approval and certification under the Direction, in addition to some further consequential amendments to the rest of the Direction. We are proposing to modify clause 5.3 in two principal ways:

- Inserting a new clause providing that it will be the AB who tells the CPs when they are permitted to use the Approval Logo and which Approval Logo to use after a Certificate of Approval has been issued; and
- Inserting a new clause to deal with the impact of Withdrawal of Approval on the use of the Approval Logo that provides that it will be the AB that will tell CPs that they are no longer permitted to use the Approval Logo.

Application of section 49 tests

4.3 Under section 49 of the Act, where a condition set under section 45 (for example, a General Condition) has effect by reference to a direction from Ofcom, Ofcom may only give, modify or withdraw a Direction where it is satisfied that it is:

- Objectively justifiable¹⁰;
- Not unduly discriminatory;
- Proportionate; and
- Transparent.

4.4 Under section 3 of the Act, Ofcom's principal duty in carrying out our functions is to further the interests of citizens in relation to communications matters and of consumers in relevant markets where appropriate by promoting competition.

4.5 Section 4 of the Act sets out Ofcom's duties for fulfilling the six Community obligations.

¹⁰ See following footnote in relation to this point.

Objective justification¹¹

- 4.6 Our provisional view is that the proposed modifications to the Direction are objectively justifiable for the following reasons:
- There is a concern, referred to earlier in this document, that there is a need to raise awareness of the Direction. The Approval Logo will help to promote such awareness and identify which CPs have had their billing systems approved under the Direction. This will provide greater incentives to CPs to submit their billing systems for voluntary, as well as mandatory, assessment under the Direction, ensuring billing accuracy (which, for reasons described earlier in this document, is essential), for the benefit of consumers.
 - The amendment to the Direction makes clear that use of the Approval Logo will be open to all CPs who have been issued with a Certificate of Approval under the Direction.
 - The introduction of an Approval Logo requires there to be due process and governance on the use of the logo including making sure it is no longer used where a CP's approval under the Direction is withdrawn. The proposed modifications to the Direction will provide this.
 - The proposed modifications will provide consumers with assurance that the use of the Approval Logo is only permitted where a CP's billing systems have been approved under the Direction and therefore will be able to trust that CPs who display the Approval Logo meet the standards required by the Direction.

Not unduly discriminatory

- 4.7 Ofcom considers that the modification of the Direction does not discriminate unduly against particular persons or against a particular description of persons. The basis for application under GC11.3 for approval under the Direction has not changed. As the use of the Approval Logo is voluntary, there is no change to the compliance requirements relating to billing accuracy set out in the Direction for CPs. Further, it will be open to all CPs obtaining approval under the Direction to use the logo.

Proportionate

- 4.8 Our provisional view is that the proposed modifications to the Direction are proportionate to what they are intended to achieve. They are necessary to implement the Approval Logo and go no further than is necessary to amend the Direction to give effect our proposals in respect of the logo.
- 4.9 The modifications will result in greater transparency and access to information for consumers regarding which CP's billing systems have been independently assessed and approved to the standards set out in the Direction. They will provide consumers with a level of confidence and assurance on the robustness of a CP's billing system used to calculate their bills. We believe the costs associated with implementing the logo should be low and that, since its use is voluntary, CPs would only incur costs if

¹¹ This is not an express requirement where Ofcom proposes a modification to a direction affecting a General Condition. We consider it relevant in this case, however, given the need for the Direction to meet the proportionality requirement.

they believed it was to their net benefit. As it is most likely that the logo will be advertised on the CP's websites, this will keep costs to a minimum.

- 4.10 In these regards, our proposals for the Approval Logo achieve the legitimate aims described in this document while imposing no greater burden on CPs than is necessary.

Transparent

- 4.11 We provisionally believe that the proposed modifications to the Direction are transparent in relation to what they are intended to achieve. They set out clearly the changes that Ofcom proposes to make to the Direction and which are explained in this consultation document.

Section 3 and section 4 analysis

- 4.12 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. Ofcom's policy objectives in relation to metering and billing regulation may be broadly characterised as furthering the interests of citizens in relation to communications matters and of consumers in relevant markets by ensuring the accuracy of metering and billing of relevant services and the ability of consumers to have confidence in that accuracy. The proposed modifications to the Direction meet these objectives because they provide CPs with a means to promote their compliance with the Direction and, if used by a CP, will improve consumers' ability to see that the CP meets the accuracy requirements set by Ofcom in the Direction. They will also promote the interests of all persons who are citizens of the European Union by helping to facilitate citizen's awareness of which CPs billing systems comply with the accuracy requirements in the Direction.

Q2 Do you agree with the proposed changes to the Direction? Please explain your reasons for your response.

Annex 1

Responding to this consultation

How to respond

1. Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 25 August 2015**.
2. Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/metering-billing-logo>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
3. For larger consultation responses - particularly those with supporting charts, tables or other data - please email approvallogo@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
4. Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Stephen Green
2nd Floor
Consumer Affairs
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3333

5. Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
6. It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

7. If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Stephen Green on 020 7981 3761

Confidentiality

8. We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

9. If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
10. Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

11. Following the end of the consultation period, Ofcom intends to publish a statement in October 2015.
12. Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

13. Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
14. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
15. If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email: Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

1. Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

2. Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

3. We will be clear about who we are consulting, why, on what questions and for how long.
4. We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
5. We will consult for up to 10 weeks depending on the potential impact of our proposals. We are consulting for 6 weeks on this occasion (a category 3 consultation - on a narrow technical issue requiring a small number of modifications to the Direction and on which we have already consulted) which allows an additional 2 weeks to take account of the summer holiday period.
6. A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
7. If we are not able to follow one of these principles, we will explain why.

After the consultation

8. We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

1. In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
2. We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
3. The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
4. We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
5. Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Q1 Do you agree with the proposal to introduce an Approval Logo? Please explain your reasons for your response.

Q2 Do you agree with the proposed changes to the Direction? Please explain your reasons for your response.

Annex 5

Notification of proposed modification to the Ofcom Metering and Billing Direction

Notification of a proposed modification to the Ofcom Metering and Billing Direction under section 49A(3) of the Communications Act 2003

Proposals

In accordance with section 49A(3) of the Act, Ofcom set out their proposals for modifications to the Ofcom Metering and Billing Direction, by reference to which General Condition 11 on Metering and Billing has effect.

1. The proposed modifications are set out in the Schedule to this Notification.
2. The effect of, and Ofcom's reasons for making, the proposed modifications are set out in the accompanying consultation document.
3. Ofcom consider that the proposed modifications are not of EU significance pursuant to section 150A(2) of the Act.
4. As set out in the accompanying consultation document, Ofcom consider that the proposed modifications satisfy the requirements of sections 49 to 49C of the Act, as appropriate and relevant.
5. In making the proposals set out in this Notification, Ofcom have considered and acted in accordance with their general duties in section 3 of the Act and the six community requirements in section 4 of the Act.
6. Any representations about the proposals should be made to Ofcom by 5pm on 25 August 2015.
7. The proposed modifications shall enter into force on the date of publication of the final Notification;
8. Copies of this Notification and the accompanying consultation document are being sent to the Secretary of State in accordance with section 49C(1) of the Act;
9. In this Notification:
 - (i) "Act" means the Communications Act 2003;
 - (ii) "General Condition 11" means General Condition 11 (as amended) of the General Conditions of Entitlement made by Ofcom under section 45 of the Act;
 - (iii) "Ofcom" means the Office of Communications;
 - (iv) "Ofcom Metering and Billing Direction" means the Direction made by Ofcom for the purposes of General Condition 11 on 31 July 2014;

10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
12. The Schedule to this Notification shall form part of this Notification.

Signed by

A handwritten signature in dark ink, consisting of a large, stylized loop followed by a horizontal stroke and a small flourish.

Lynn Parker

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

15 July 2015

SCHEDULE

Proposed modifications to the Ofcom Metering and Billing Direction

1. The list of contents will be modified after “5.6 Withdrawal of Approval” to insert:
“5.7 Rights to use the Approval Logo and Impact of Withdrawal of Approval”
2. The list of contents at point 7 after “Annex C – Wholesale services” will be modified so that it says:
“Annex D – Approval Logo”
3. Clause 5 will be modified to insert the following words at the end of 5.3:
“Once a Certificate of Approval has been issued to a CP, the AB will determine which Approval Logo is appropriate for the CP to be permitted to use based on the service/s within the scope of the CP’s Certificate of Approval. The AB will tell the CP which Approval Logo it is permitted to use for the purpose of informing its customers that it has achieved Approval.
4. CPs shall supply a copy of their Certificate of Approval to Ofcom in order to obtain an electronic copy of the appropriate Approval Logo. Ofcom will supply the relevant electronic copy once it is satisfied that the CP has the appropriate Certificate of Approval for the services listed on the Approval Logo that the CP is seeking. Ofcom will seek confirmation from the ABs where necessary to determine this.”
5. Clause 5 will be modified after 5.6.2 to insert:
“5.7 Rights to use the Approval Logo and Impact of Withdrawal of Approval
6. Where it uses the Approval Logo, the relevant CP must at all times use it lawfully and in activities and practices which are lawful. If, at any time, Ofcom requires a CP to cease using the Approval Logo for any reason and in any or all particular ways, the CP shall immediately cease all or, as the case may be, any specified use of the Approval Logo.
7. Where there has been a Withdrawal of Approval, the AB will immediately tell the relevant CP that it is no longer permitted to use the relevant Approval Logo for the services within the scope of the Approval that has been withdrawn. The CP shall then immediately cease all use of the relevant Approval Logo.”
8. Clause 7 will be modified after “Wholesale services – Annex C” to insert:
“Approval Logo – Annex D”
9. Annex A will be modified to insert a new term for “Approval Logo” to be defined as “means one of the Logos set out in Annex D”.
10. A new Annex D will be inserted as follows:
“Annex D: Approval Logos

Annex 6

Proposed designs for the Approval Logo

